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(2) Has a deficiency in a subject which is indispensable to the satisfactory pursuit of an approved program of education.

(b) *Approval.* The Department of Veterans Affairs will grant approval when:

(1) The educational institution certifies that:

(i) Individualized tutorial assistance is essential to correct a deficiency in a specified subject or subjects required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of an approved program of education;

(ii) The tutor selected:

(A) Is qualified, and

(B) Is not the parent, spouse, child, brother or sister of the veteran or eligible person; and

(iii) The charges for this assistance do not exceed the customary charges for such tutorial assistance; and

(2) The assistance is furnished on an individual basis.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3234, 3314, 3492, 3533(b))

(c) *Limits on tutorial assistance.* (1) VA will authorize the cost of tutorial assistance in an amount not to exceed \$100 per month.

(2) The total amount of all tutorial assistance provided under this section will not exceed \$1200.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

(d) *Entitlement charge.* VA will make no charge against the veteran's or eligible person's entitlement to educational assistance for any amount of tutorial assistance authorized.

(Authority: 10 U.S.C. 16131(h); 38 U.S.C. 3019, 3314, 3492, 3533(b))

[48 FR 37989, Aug. 22, 1983, as amended at 50 FR 19935, May 13, 1985; 55 FR 28027, July 9, 1990; 61 FR 26114, May 24, 1996; 74 FR 14670, Mar. 31, 2009]

### COURSES

## § 21.4250 Course and licensing and certification test approval; jurisdiction and notices.

(a) *General.* The statements made in this paragraph are subject to excep-

tions found in paragraph (c) of this section.

(1) If an educational institution offers a resident course in a State, only the State approving agency for the State where the course is being offered may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(2) If an educational institution with a main campus in a State offers a resident course not located in a State, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training. If the State approving agency chooses to approve a resident course (other than a flight course) not leading to a standard college degree, it must also approve the class schedules of that course.

(3) If an educational institution offers a course by independent study or by correspondence, only the State approving agency for the State where the educational institution's main campus is located may approve the course for VA training.

(4) If a training establishment offers a program of apprenticeship or other on-job training, only the State approving agency for the State where the training will take place may approve the course for VA training.

(5) Except as provided in paragraph (a)(6)(ii) of this section, if a State or political subdivision of a State offers a licensing test, only the State approving agency for the State where the license will be valid may approve the test for VA payment.

(6)(i) If an organization or entity offers a licensing or certification test and applies for approval of that test, only the State approving agency for the State where the organization or entity has its headquarters may approve the test and the organization or entity offering the test for VA payment. This approval will be valid wherever the test is given.

(ii) If the organization or entity offering a licensing or certification test does not apply for approval, and a State or political subdivision of a State

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requires that an individual take the test in order to obtain a license, the State approving agency for the State where the license will be valid may approve the test for VA payment. This approval will be valid for the purpose of VA payment only if the veteran takes the test in the State or political subdivision of the State where the license is valid.

(7) A course approved under 38 U.S.C. chapter 36 will be deemed to be approved for purposes of 38 U.S.C. chapter 35.

(8) Any course that was approved under 38 U.S.C. chapter 33 (as in effect before February 1, 1965), or under 38 U.S.C. chapter 35 before March 3, 1966, and was not or is not disapproved for failure to meet any of the requirements of the applicable chapters, will be deemed to be approved for purposes of 38 U.S.C. chapter 36.

(9) VA may make tuition assistance top-up payments of educational assistance to an individual to meet all or a portion of an educational institution's charges for education or training that the military department concerned has not covered under tuition assistance, even though a State approving agency has not approved the course in which the individual was enrolled.

(Authority: 38 U.S.C. 3014(b), 3313(e), 3315, 3670, 3672(a))

(b) *State approving agencies.* Approval by State approving agencies will be in accordance with the provisions of 38 U.S.C. Chapter 36 and such regulations and policies as the agency may adopt not in conflict therewith.

(1) *Notice of approval.* (i) Each State approving agency must provide to VA:

(A) A list of schools specifying which courses it has approved;

(B) A list of licensing and certification tests and organizations and entities offering these tests that it has approved; and

(C) Any other information that it and VA may determine to be necessary.

(ii) The lists and information must be provided on paper or electronically as VA may require.

(2) *Notice of suspension of approval or disapproval.* Each State approving agency will notify the Department of Veterans Affairs of the suspension of

approval or disapproval of any course or licensing or certification test previously approved and will set forth the reasons for such suspension of approval or disapproval. See §21.4259.

(Authority: 38 U.S.C. 3672(a))

(3) *Failure to act.* If notice has been furnished that the State approving agency does not intend to act on the application of a school, the school may request approval by the Department of Veterans Affairs.

(c) *Department of Veterans Affairs approval.* (1) The Director, Vocational Rehabilitation and Employment Service may approve special restorative training in excess of 12 months to overcome or lessen the effects of a physical or mental disability to enable an eligible child to pursue a program of education under 38 U.S.C. chapter 35.

(2) The Director, Education Service may approve—

(i) A course of education offered by any agency of the Federal Government authorized under other laws to offer such a course;

(ii) A course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, 35, or 36 offered by a school located in the Canal Zone, Guam or Samoa;

(iii) Except as provided in §21.4150(d) as to the Republic of the Philippines, a course of education to be pursued under 10 U.S.C. chapter 1606 or 38 U.S.C. chapter 30, 32, 33, or 35 offered by an institution of higher learning not located in a State;

(iv) Any course in any other school in accordance with the provisions of 38 U.S.C. chapter 36;

(v) Any program of apprenticeship the standards for which have been approved by the Secretary of Labor pursuant to section 50a of Title 29 U.S.C. as a national apprenticeship program for operation in more than one State and for which the training establishment is a carrier directly engaged in interstate commerce and providing training in more than one State; and

(vi) Any licensing or certification test and any organization or entity offering such a test if—

(A) The organization or entity is an agency of the Federal government;

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(B) The headquarters of the organization or entity offering the test is not located in a State; or

(C) The State approving agency that would, under paragraph (a)(5) or (a)(6) of this section, have approval jurisdiction for the test has declined to perform the approval function for licensing or certification tests and the organizations or entities offering these tests.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3034, 3241, 3314, 3323(a), 3476, 3523, 3672, 3673, 3689)

CROSS REFERENCE: *Designation.* See § 21.4150.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–0051)

[31 FR 6774, May 6, 1966, as amended at 35 FR 9816, June 16, 1970; 41 FR 30640, July 26, 1976; 44 FR 54707, Sept. 21, 1979; 48 FR 37990, Aug. 22, 1983; 51 FR 16317, May 2, 1986; 61 FR 20728, May 8, 1996; 62 FR 55760, Oct. 28, 1997; 72 FR 16973, Apr. 5, 2007; 74 FR 14670, Mar. 31, 2009]

### § 21.4251 Minimum period of operation requirement for educational institutions.

The provisions of this section do not apply to licensing or certification tests or to the organizations or entities offering those tests. For information on the minimum period of operation requirement that applies to licensing or certification tests, see § 21.4268.

(a) *Definitions.* The following definitions apply to the terms used in this section. The definitions in § 21.4200 apply to the extent that no definition is included in this paragraph.

(1) *Control.* The term *control* (including the term *controlling*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) *Person.* The term *person* means an individual, corporation, partnership, or other legal entity.

(Authority: 38 U.S.C. 3680A(e))

(b) *Some educational institutions must be in operation for 2 years.* Except as provided in paragraph (c) of this section, when a proprietary educational

institution offers a course not leading to a standard college degree, VA may not approve an enrollment in that course if the proprietary educational institution—

(1) Has been operating for less than 2 years; or

(2) Offers the course at a branch or extension and the branch or extension has been operating for less than 2 years; or

(3) Offers the course following either a change in ownership or a complete move outside its original general locality, and the educational institution does not retain substantially the same faculty, student body, and courses as before the change in ownership or the move outside the general locality unless the educational institution, after such change or move, has been in operation for at least 2 years.

(Authority: 38 U.S.C. 3680A(e) and (g))

(c) *Exception to the 2-year operation requirement.* Notwithstanding the provisions of paragraph (b) of this section, VA may approve the enrollment of a veteran, servicemember, reservist, or eligible person in a course not leading to a standard college degree approved under this subpart if it is offered by a proprietary educational institution that—

(1) Offers the course under a contract with the Department of Defense or the Department of Transportation; and

(2) Gives the course on or immediately adjacent to a military base, Coast Guard station, National Guard facility, or facility of the Selected Reserve.

(Authority: 38 U.S.C. 3680A(e) and (g))

(d) *Operation for 2 years.* VA will consider, for the purposes of paragraph (b) of this section, that a proprietary educational institution (or a branch or extension of such an educational institution) will be deemed to have been operating for 2 years when the educational institution (or a branch or extension of such an educational institution)—

(1) Has been operating as an educational institution for 24 continuous months pursuant to the laws of the State(s) in which it is approved to operate and in which it is offering the training; and